

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE 'STATE OF CALIFORNIA'

In the Matter of the Appeal of)
GEORGE J. SEVCSIK)

For Appellant: George J. Sevcsik, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Gary Paul Kane
Tax Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of George J. Sevcsik for refund of personal income tax in the amount of \$49.50 for the year 1965.

The question for decision is whether appellant was a resident of California throughout 1965 for purposes of the California personal income tax.

Appellant is an engineer by profession. He is employed by Parsons, Brinckerhoff, Quade & Douglas, Inc. (hereafter "P.B.Q. & D., Inc."), a company with headquarters in New York and offices in San Francisco, California. During 1965 he was unmarried.

Upon his arrival in California in September of 1964, appellant purchased a home in Oakland and resided there until July 31, 1965. On that date P.B.Q. & D., Inc. sent him to Okinawa in the Ryukyu Islands, under a nine months* employment agreement. While appellant was working in Okinawa a friend occupied his house in Oakland.

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On April 4, 1966, appellant returned to California and resumed occupancy of his Oakland home. He planned to apply for United States citizenship, and his primary purpose in returning to California was to satisfy the United States residency requirement. He remained in this state throughout the remainder of 1966 and on February 7, 1967, he became a naturalized citizen of the United States.

Appellant filed a resident California personal income tax return for 1965 in which he reported all income which he had earned during that year. Subsequently appellant filed a claim for refund, asserting that the income which he earned between July 31, 1965, and December 31, 1965 while working in Okinawa, should not have been included in his taxable income.

Respondent denied appellant's claim for refund on the ground that appellant remained a resident of California throughout 1965 although he was temporarily absent from this state while working overseas, and that, as a resident, appellant's earnings from his employment outside California remained subject to the California personal income tax. The determination gave rise to this appeal,

Section 17014 of the Revenue and Taxation Code provides:

"Resident" includes:

(a). Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

Regulation 17014-17016(b) of title 18 of the California Administrative Code explains the meaning of the phrase "temporary or transitory purpose" as follows:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each

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particular case, It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving thereafter, he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country.

Although this regulation is framed in terms of whether or no an individual's presence in California is for a "temporary or transitory purpose," the same examples may be considered in determining the purpose of a domiciliary's absence from the state. Regulation 17014-17016(b) also states that the underlying theory of sections 17014-17016 of the Revenue and Taxation Code is that the state with which a person has the closest connection during the taxable year is the state of his residence.

Although the record in the instant case is somewhat sketchy, it appears that appellant became a resident and domiciliary of California in September 1964. It was then that he arrived in this state and purchased a home in Oakland. At that time he was apparently working out of the San Francisco office of P.B.Q. & D., Inc., and he remained in California for the first seven months of 1965.

In order for appellant's California residency to have ceased during 1965 he must have left this state for other than a temporary or transitory purpose. On July 31, 1965, appellant's employer sent him to Okinawa under a nine months'

employment contract. During his absence of some eight months he retained ownership of his home in Oakland., He filed a resident return for California personal income tax purposes for 1965. When he returned to the United States in April 1966 to comply with the residency requirements for naturalization as a United States citizen, he returned to California rather than to some other state.

On the basis of the facts which are available we must conclude that appellant's absence from this state was a temporary one, that during 1965 he had his closest connect with the State of California and, consequently, that he remained a resident of California throughout 1965. Respondent's action in this matter must therefore be sustained.

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of George J. Sevcsik for refund of personal income tax in the amount of \$49.50 for the year 1965, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of
March, 1968, by the State Board of Equalization.

Robert D. Lee, Chairman
John W. Lynch, Member
John W. Lynch, Member
John W. Lynch, Member
John W. Lynch, Member

ATTEST : _____, Secretary